Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

No. 96-730

Dorothy L. Aldrich, et al.,

Petitioners,

v.

General Public Utilities Corp., Metropolitan Edison Co., Jersey Central Power & Light Co., Pennsylvania Electric Co., Babcock & Wilcox Co., McDermott Incorporated, Raytheon Constructors Inc., Burns & Roe Enterprises, Inc. and Dresser Industries, Inc.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITIONERS' REPLY BRIEF IN SUPPORT OF A WRIT OF CERTIORARI

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I. INTRODUCTION

Respondents, in their brief, spend a significant time contesting the merits of Petitioners' claims. These arguments simply highlight the significant issues raised in this petition and why this Court should grant a Writ of Certiorari. The Respondents also suggest that Petitioner's central argument — that the retroactive applicability of the Amendments Act's choice of law provision to the statute of limitations — was not raised below despite the opinion of the dissenting panelist considering the issue at length.

This reply responds to the arguments opposing further review by this Court.

II. REPLY REASONS FOR ALLOWING WRIT

A. THE INEQUITY RESULTING FROM RETROACTIVE APPLICATION OF THE AMENDMENTS ACT TO THE STATUTE OF LIMITATIONS IS AN IMPORTANT ISSUE OF FEDERAL LAW

The Respondents contend that because Congress based the Amendments Act's choice of law provision, 42 U.S.C. §2014(hh), on a similar provision in the Outer Continental Shelf Lands Act, 43 U.S.C. §1331, *ipso facto* makes the retroactive application of §2014(hh) to the Petitioners' claims to shorten the statute of limitations and abolish their claims appropriate. As discussed in our Petition there is no rational basis supporting the interpretation urged by the Respondents and adopted by the majority panel.

Indeed, Respondents surprisingly suggest that *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) supports their interpretation. It does not. In that case, this Court was especially troubled that the retroactive application of its decision in *Rodrique v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969) would result in the application of a shorter statute of limitations to a claim that had been proceeding in a timely fashion for more than a year before *Rodrique* and result in it being time-barred.

Recognizing the inequity of the situation, this Court held that the shorter statute of limitations should not be retroactively applied:

> To hold that the respondent's lawsuit is retroactively time barred would be anomalous indeed. A primary purpose underlying absorption of state law as federal law in the Lands Act was to aid injured employees by affording them comprehensive and familiar remedies. Yet retroactive application of the Louisiana statute of limitations to this case would deprive the respondent of any remedy whatsoever on the basis of superseding legal doctrine that was quite unforeseeable. To abruptly terminate this lawsuit that has proceeded through lengthy and, no doubt, costly discovery stages for more than a year would surely be inimical to the beneficent purpose of the Congress.

Chevron Oil, 404 U.S. at 107-08 (citation omitted) This reasoning is directly applicable to Petitioners' claims.

The same inequities that applied to plaintiff Huson applies to the plaintiff Petitioners. Congress could not have intended that a rational basis of providing for a single forum to determine public liability actions to generate efficiencies and uniform results through the Amendments Acts would be well served by retroactively time-barring timely filed cases once they were transferred to the new forum. The majority's decision to disallow Petitioners' claims produces the most substantial inequitable result. Even standing alone, the issue is of such importance to federal law that the Petition should be granted.

B. THE RETROACTIVE APPLICATION OF A SHORTER STATUTE OF LIMITATIONS WITHOUT RESORT TO A GRACE PERIOD WAS UNCONSTITUTIONAL AND INCONSISTENT WITH THIS COURT'S RULINGS

Due process is violated when a new, shorter statute of limitations is imposed upon pending litigation without allowance of a reasonable grace period. *See Block v. North Dakota, ex rel. Board of University and Sch. Lands*, 461 U.S. 273, 286 (1983); *Texaco Inc. v. Short*, 454 U.S. 516, 527 (1982). This precedent was not adhered to by the Third Circuit.

The Respondents suggest that disregarding this line of cases was appropriate because Plaintiffs do not have a "vested right" in a cause of action. Respondents rely on the district court's opinion and a line of cases, all of which substituted a remedy in place of the shorter statute of limitations. *See Arbour v. Jenkins*, 903 F.2d 416, 419-422 (6th Cir. 1990); *Sowell v. American Cyanamid Co.*, 888 F.2d 802, 805-806 (11th Cir. 1989); *In re Consol. U.S. Atmospheric Testing Litigation*, 820 F.2d 982, 990-92 (9th Cir. 1987), *cert. denied sub nom., Konizeski v. Livermore Labs*, 485 U.S. 905 (1988); *Hammond v. United States*, 786 F.2d 8, 10-14 (1st Cir. 1986). Unlike the cases relied upon by the Respondents, in this instance Petitioners were not provided any substitute remedy. Petitioners claims were simply dismissed. That inequity violated their due process rights since they were not provided any grace period, regardless of the fact that their claims had not yet been reduced to a judgment.

C. THE IMPACT OF THIS DECISION WILL EXTEND BEYOND THIS LITIGATION

Finally, the Respondents contend that the issue presented in this Petition regarding the retroactive application of specifically lobbied for legislation to eliminate presently pending litigation should not be reviewed because this Court has previously denied certiorari in cases presenting similar questions and because they do not believe that any other litigants will be effected by a ruling. They are wrong.

This Court's previous denials of certiorari in similar appeals has no precedential authority. Also hundreds of additional TMI plaintiffs could be directly affected by this ruling.

More importantly, however, a ruling by this Court will make clear that litigants can not buy their way out of litigation through lobbying and usurp the role of the courts in finally determining and resolving existing cases and controversies by retroactively abolishing the rights of ordinary citizens.

III. CONCLUSION

For the foregoing reasons and those set forth in Petitioner's opening brief, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Dated: December 18, 1996

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